

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:10-CV-172-BO

WILLIAM C. MANN,)
Plaintiff,)
v.) **ORDER**
M. DALE SWIGGETT,)
Defendant.)

This matter is before the Court sua sponte. Judgment in favor of the plaintiff was entered in this action on November 14, 2012 [D.E. 144]. In 2013, the parties filed various post-trial motions, all of which were denied by the Court.

On January 26, 2021, plaintiff filed a request for the clerk to issue a notice of rights to have exemptions designated.¹ See Fed. R. Civ. P. 69(a) (providing that a money judgment is enforced by a writ of execution and “[t]he procedure on execution—and in proceedings supplementary to and in aid of judgment or execution—must accord with the procedure of the state where the court is located”) see also N.C. Gen. Stat. § 1C-1603(a)(4) (providing that a clerk may not issue an execution “unless notice from the court has been served upon the judgment debtor advising the debtor of the debtor’s rights”). To date, the clerk has not issued the notice.

Despite the clerk not issuing the notice, defendant has filed an unsigned motion to claim exemptions [D.E. 192]. Attached to the motion is “Notice of Rights to Have Exemptions Designated” that appears to have been issued by the previous clerk of this court in 2013, but altered to bear the “/s” signature of the current clerk of court and the date of January 26, 2021.

¹ This proposed notice of rights is not the form notice posted on the court’s website and does not include the proposed notice to claim exemptions that is required to be served on judgment debtors.

[D.E. 192-1]. The Court has confirmed with the clerk that he did not issue the notice of rights attached to the motion. The motion filed by defendant does not include all of the sections included in the form posted on the court's website. Because plaintiff ostensibly served defendant with his own altered notice which was not issued by the clerk, the Court cannot discern whether defendant omitted sections of the motion, or if an incomplete form motion was served on defendant.

Given that plaintiff ostensibly served defendant with an altered, and possibly incomplete, notice of rights, the motion to claim exemptions is DENIED without prejudice. Rather than issue the proposed notice filed by plaintiff, the clerk is DIRECTED to complete the form notice posted on the court's website and issue it to plaintiff to serve. Counsel for plaintiff must electronically file the return of service of the notice of rights.

SO ORDERED. This the 11 day of March, 2021.


TERRENCE W. BOYLE
United States District Judge